

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 61/2016

Reserved on 18th May, 2016
Date of pronouncement: 30th May, 2015

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Sections 391(1) of the
Companies Act, 1956**

Scheme of Amalgamation of:

NXP Semiconductors India Private Limited

Non-Applicant/Transferor Company

WITH

Freescal Semiconductor India Private Limited

Applicant/Transferee Company

**Through Mr. Rajeev Kumar with
Ms. Alka Srivastava and Mr. Ajeet
Singh, Advocates for the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Section 391(1) of the Companies Act, 1956, by the applicant/transferee company seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors to consider and approve with or without modification, the proposed Scheme of Amalgamation of NXP Semiconductors India Private Limited (hereinafter referred to as the transferor company) with Freescale Semiconductor India Private Limited (hereinafter referred to as the applicant/transferee company) .

2. The registered office of the applicant/transferee company is situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the transferor company is situated at Karnataka, outside the jurisdiction of this Court. Learned counsel for the applicant submits that a separate application will be filed by the transferor company before the court of competent jurisdiction for sanction of Scheme of Amalgamation in respect of the transferor company.

3. The applicant/transferee company was originally incorporated under the Companies Act, 1956 on 10th February, 2004 with the Registrar of Companies, NCT of Delhi and Haryana at New Delhi under the name and style of Zodiac Software Systems Private Limited. The company changed its name to Freescale Semiconductor India Private Limited and obtained the fresh certificate of incorporation on 1st April, 2004.

4. The present authorized share capital of the applicant/transferee company is Rs.1,00,00,00,000/- divided into 10,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.87,15,22,010/- divided into 8,71,52,201 equity shares of Rs.10/- each.

5. Copies of the Memorandum and Articles of Association of the transferor company and the applicant/transferee company have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor company and the applicant/transferee company, along with the report of the auditors, have also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is claimed by the applicants that the proposed amalgamation will achieve greater integration and greater financial strength and flexibility, to maximize overall shareholder value and improve the competitive position of the combined entity. It is further claimed that the proposed amalgamation will also achieve greater efficiency in cash management and unfettered access to cash flows generated that could be deployed more efficiently to fund organic or inorganic growth opportunities.

7. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the applicant/transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:-

“5,73,58,998 equity shares of Rs.10/- each of the transferee company for every 25,18,060 equity shares of Rs.50/- each held in the transferor company.”

8. It has been submitted by the applicant that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 and 214 of the Companies Act, 2013 are pending against the applicant/transferee company.

9. The Board of Directors of the transfer company and the applicant/transferee company in their separate meetings held on 18th March, 2016 and 22nd March, 2016 respectively have unanimously approved the proposed Scheme of Amalgamation. A copy of the resolution passed at the meetings of the Board of Directors of the transferor company and the applicant/transferee company have been placed on record.

10. The applicant/transferee company has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the applicant/transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the applicant/transferee company as on 28th March 2016.

11. The applicant/transferee company has 91 unsecured creditors, as on 28th March, 2016 whose consents have not been placed on record. Learned counsel for the applicant seeks dispensation of the meeting of the unsecured creditors of the applicant/transferee company on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its creditors and the rights of the unsecured creditors will not be adversely affected by the proposed Scheme. He has further submitted that these creditors are short term creditors whose debt pertains to the period of less than six months and they are being paid in the normal course of the business. The applicant has also placed on record a certificate dated 28th March, 2016 of Alok Singhal & Co., Chartered Accountants showing that the consolidated net worth of the transferee company, post amalgamation, will be Rs.2,25,69,61,930/-. Learned counsel has further submitted that since 28th March, 2016, the debt of 57% of the unsecured creditors have been paid amounting to Rs.2,93,59,895/- out of Rs.5,13,54,032/-, which was outstanding as on 28th March, 2016. A certificate dated 04.05.2016 of Alok Singhal & Co., Chartered Accountants in this regard has also been placed on record. The applicant company has also placed on record an additional affidavit dated 26th May, 2016 of Ms. Sarita Tyagi, Company Secretary/Authorized Signatory of the transferee company stating that the debt of 80 unsecured creditors out of 91 unsecured creditors has

been paid in full as on 24th May, 2016 and the debt of 08 unsecured creditors out of the remaining 11 unsecured creditors has been partly paid. Therefore, as on 24.05.2016, only a sum of Rs.25,38,226/- remains to be paid out of the total sum of Rs.5,13,54,032/-. In view of the aforesaid and the considering the fact that the unsecured creditors of the applicant/transferee company are short term creditors whose debts are being paid in the normal course of the business of the company and considering the Scheme of Amalgamation, the requirement of convening and holding the meeting of the unsecured creditors of the applicant/transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with.

12. The Application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 30, 2015